

31 October 2018

Stephen O'Donoghue,  
Team Leader, Assessments  
Department of Planning and Environment

Dear Steve,

**Boggabri Coal Project Mod 7**

Like others, I have been attempting to assess the implications of Boggabri Coal's application to modify condition Approval 09\_0182 (MOD7) which is said by the Environmental Assessment to be "largely" administrative.

In particular I am concerned about changes to consent condition 47(a) of the Boggabri Coal approval, which is being treated as an "administrative" amendment but clearly it falls within that portion of the MOD7 which is not administrative at all, as it has substantial implications for the long-term security of biodiversity offsets for the Boggabri Coal mine. A change in this condition also has potentially huge ramifications if, and when, Whitehaven Coal seeks to harmonise its own obligation regarding the long-term arrangements for offsets.

On that point, we have already seen a spate of instances where Whitehaven Coal requests modifications because they want to "harmonise" eg Tarrawonga noise conditions, or the Maules Creek mine "administrative" modification. I object to the growing practice of the Department to describe modifications with material consequences as merely "administrative".

To a lesser extent, I am concerned about road transport of coal samples for laboratory testing and marketing – not because I fear some nefarious ulterior motive on the part of Idemitsu, but because I am concerned about cumulative road impacts in a situation where Vickery mine is commencing with plans to continue hauling coal by road until Year 12 of the project if it so wishes. Furthermore the Road Transport Assessment of the Vickery Extension EIS is based on 6-year old data from 2012 which pre-dates the extension of Boggabri Coal. Also, Maules Creek Coal Mine MOD3, which was vigorously opposed by a number of community groups. In short, I do not believe that decision making on road transport impacts is possible using outdated information. Although the Boggabri MOD 7 road transport modification is a tiny fragment of the road haulage compared with the increases that Whitehaven proposes, nevertheless it is crucial that the process of determining approvals is based on sound evidence and that cumulative impacts are considered in detail. (I attach for your reference the Submission of the Wando Conservation and Cultural Centre which includes detailed analysis of the Road Transport Assessment of the Vickery mine and sheds light on the flawed road transport data that has been used to support Vickery Extension Project.)

Returning to the subject of condition 47(a). Evidently with the Department's approval – even encouragement – Boggabri Coal is seeking to substitute the performance time-limit on securing long-term conservation agreements (December 2019) with no prescribed time-limit. I refer to this extract from the Environmental Assessment:

**“Proposed Modification**

It is proposed that Condition 47(a) of Schedule 3 be modified ... The following modification (in underlined text) to Condition 47(a) of Schedule 3 is proposed:

*Long Term Security of Offset*

47. The Proponent shall make suitable arrangements to provide appropriate long-term security for the offset areas:

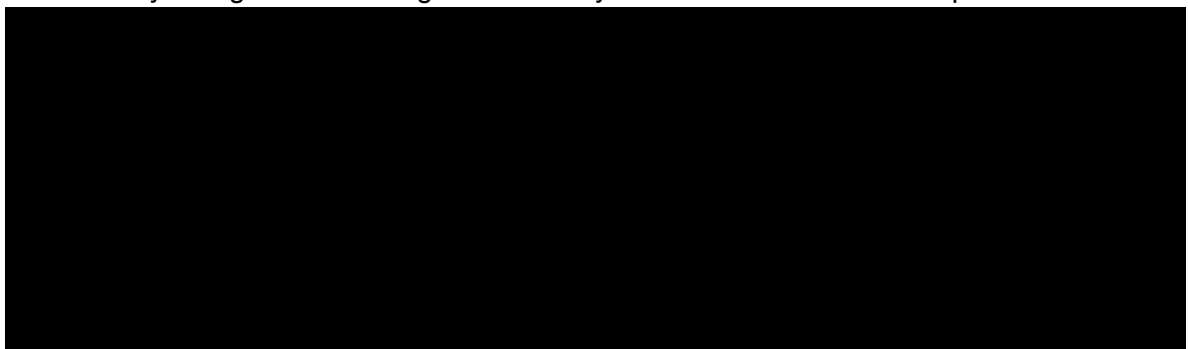
(a) For the areas included in Table 15 as owned, under option or committed by the Proponent, the long-term security shall be provided by a form of binding agreement acceptable to the Secretary that records the obligations assumed by the Proponent under the conditions of this approval in relation to these offset areas. These agreements must be registered by December 2019 unless agreed otherwise by the Secretary after consultation with Chief Executive of OEH. The agreements must remain in force in perpetuity.”

Under this scenario, the Secretary has complete discretion to approve a new form of conservation agreement and completely removes the time limit. The prospect of removing the time limit and replacing it, not with another time limit but a completely open-ended provision that is subject of the unfettered discretion of the Secretary, is unacceptable and contrary to the intentions of the approval.

Upon conducting further enquiries with the company and the office of Environment and Heritage it is now emerging that one of the reasons for this Modification is likely due to the delays and setbacks going on with the OEH in implementing the Biodiversity Conservation Trusts regime, from what I have recently learned yesterday it is possibly even a bureaucratic hold-up. If so, changing the deadline to give the Secretary complete discretion over the form and timing of the long term security of offsets is the wrong mechanism.

I support of my objection to the biodiversity provision of MOD7, I wish to explain as follows:

1. **“Acceptable to the Secretary” - discretion.** The unfettered discretion of the Secretary in regard to the long term security of the offsets is not in the public interest.



2. **“Acceptable to the Secretary” – track record.** The similar wording used in the Leard mines consents – “satisfaction of the Secretary” has met with widespread disagreement within the affected communities surrounding the Leard mines, as to what is “satisfactory”. There is a widespread view that the Secretary’s satisfaction does not concur with the majority of community members. The Secretary appears to be “satisfied” with the blasting impacts and blast management, noise impacts,

biodiversity impacts even when there is copious evidence that a rational observer would not be satisfied.

3. **Lack of information.** Already, there is a wall of silence around long-term land management planning and the community has been locked out of being consulted on the Leard Regional Biodiversity Strategy, as per the final version of Stage 2 of the RBS.
4. **Cumulative impacts.** There is no evidence that cumulative impacts are being given any more than lip-service. This is known by the fact that known future developments not currently in an actual Project Approval process are entirely ignored. Cumulative expansion of coal mines in the pipeline such as Maules Creek A346, Goonbri Exploration Area, as well as the Vickery Mine, the Vickery State Forest Exploration Licence— none of which are included in the Leard RBS – need to be at the forefront of consideration in all long-term planning. I am also concerned that Whitehaven and now Idemitsu have indicated that they wish to mine the Commonwealth Biodiversity Corridor, replacing this with a rehabilitated corridor somewhere else. I am opposed to this.
5. **History of ongoing delays in offset compliance.** The original time in the conditions is December 2014 and the new proposed time is December 2019. Condition 47(a) of schedule 3 of the conditions of approval, as extracted at p 23 of the EA, required the Proponent to register the conservation agreements “by December 2014 unless agreed otherwise by the Secretary after consultation with Chief Executive of OEH”. I am not aware of the legalities of when this occurred. [REDACTED]  
[REDACTED] The Regional Biodiversity Strategy which is supposed to be the overarching land-use strategy was also over two years late. Can you please confirm by what mechanism this date condition was changed?
6. **Intention of Planning Assessment Commission.** When the Boggabri Part 3A project was first approved by the Planning Assessment Commission in 2012, the PAC specifically amended the “Long term security offset” condition so that it contained more specificity around what was required of the Proponent in relation to offsets. I refer you to the following documents: DPE’s recommended project approval conditions (see Sch 3 Cond 43); and PAC determination report (p 5, second paragraph from the bottom of the page, which notes that the PAC has inserted “greater specificity concerning mechanisms for ensuring long-term security of offsets” (draft condition 43 – now final approval condition 47).

It is really wrong for the Department to be seeking to against the clear intention of the PAC.

This change has the potential to unravel the whole Regional Biodiversity Strategy, especially if Maules Creek mine seeks a similar Modification, which is very possible as they already had to obtain an extension from the Commonwealth for their EPBC offsets.

What MOD 7 has revealed is the disorderly state of offsets governance in NSW, with extensive delays on the part of the OEH in approving biodiversity offsets. Meanwhile the Department of Planning refused to allow the public a reasonable period of exhibition of the Vickery mine EIS which is a huge project with many features not previously consulted to the community, like a railway through prime koala habitat, which has not been accurately mapped and underestimates the impact on the local species population.

I object to the changes to the biodiversity condition contained in MOD 7 and believe it should be dealt with not as an administrative change. Ideally, it should be referred to the Independent Planning Commission and provide the public with the opportunity to learn what is really going on in OEH regarding the system of Conservation Trusts and biodiversity offsets in the Leard region, which until now has included also the Vickery mine area.

I have no confidence that biodiversity offsets are being properly regulated in this region, and believe this matter needs scrutiny. It should not be dealt with behind closed doors.

In conclusion, I believe that MOD7 should be dealt with under s 4.55 of the *Environmental Planning and Assessment Act 1979*. There are substantial community benefits that would flow from this, including the Minister's requirement to consider the matters listed in s 4.15 (formerly s 79C). Note that no such list of mandatory considerations applies to the old s 75W modifications.

The application should be dealt with under s 4.55(2) of the EP&A Act and public notification of the modification should follow.

Yours sincerely,